Secrecy 5

LS 5-2261a

27 October 1955

MEMORANDUM FOR: Mr. Houston

SUBJECT : Secrecy Agreement and [redacted] Comments Thereon. 25X1A9a

1. The following are my comments concerning the new secrecy agreement recently published as Change 2 to [redacted] 25X1A
25X1A [redacted] and [redacted] criticisms of September 12, 1955 (herewith): 25X1A

25X1A9a a. With reference to [redacted] paragraph 4A (1) I agree that the last sentence in paragraph 3 of the agreement could be improved. The meaning, however, seems clear. Mr. 25X1A9a [redacted] point was that since the term "employment" means primarily "the act of employing" the provision in that sentence that the "undertaking shall be equally binding upon me after my employment with the Agency as during it" would mean the undertaking is binding only after "the act of employment" takes place, rather than after the state of being employed ceases. I do not agree. In the first place the primary meaning of employment according to Webster's New International Dictionary (1953) is "act of employing or state of being employed" and 25X1A9a not, contrary to [redacted] contention, only the former. Moreover, even if that were the only primary meaning of the term, 25X1A9a [redacted] interpretation would require the last sentence to mean that the undertaking is equally binding after the simple, instantaneous act of becoming employed as during that act. Such a meaning is obviously ridiculous and I have no doubt that no employee so reads the sentence.

25X1A9a b. [redacted] paragraph 4A (2) suggests that paragraph 5 of the agreement is a grammatical garble, virtually unintelligible. I agree.

25X1A9a c. I believe the point of [redacted] paragraph 4B (1) is that because of the use of the word "such" (which in the contexts means "classified") in sentence two of paragraph 3 the prohibitions in paragraph 3 apply only to "classified" information of the types mentioned immediately after the word "such". On 25X1A9a this point I think [redacted] is correct. He also suggests, however, that this use of the word "such" completely alters, or negates, the intention of paragraphs 6 and 8. Paragraph 6 provides that to carry any "grievance or complaint outside the Agency will be considered a violation of the undertaking set forth above in paragraph 3." His point is that because paragraph

3 applies only to classified information, the prohibition in paragraph 6 means that carrying a grievance outside the Agency will be considered a violation of paragraph 3 only if the grievance involves classified information. However, since carrying grievances outside the Agency which involve classified information would be prohibited by paragraph 3 alone and does not need to be repeated by paragraph 6 and since paragraph 6 must be presumed to intend some meaning, it would follow that notwithstanding that paragraph 3 prohibits only classified disclosures, carrying unclassified grievances outside the Agency would be prohibited by paragraph 6. Even if I am right here, however, it is certainly true that paragraphs 3 and 6 are unclear and may be understood only by careful reading and by the application of rules of statutory construction. [redacted] 25X1A9a also suggested that paragraph 3 negates paragraph 8. This seems entirely wrong, since they are separate provisions and have no cross-reference or cross-application. Paragraph 8 is broader than, and additional to, paragraph 3. There is, I believe, no conflict between the two.

25X1A9a d. [redacted] paragraph 4B (2) suggests that paragraph 4 of the agreement appears to be in direct conflict with paragraphs 5,6, and 8, and also raises certain other questions relating to those paragraphs. His questions are not entirely clear but at least part of his point seems to be that because paragraph 4 requires the employee to seek Agency decisions as to whether information is classified and who is authorized to receive it, the restrictions of paragraphs 5,6, and 8, which appear to apply with respect to both classified and unclassified information, really restrict nothing with respect to unclassified information, once the employee has complied with the requirement that he obtained Agency decision that the information is unclassified. There appears to be no substance to this suggestion. Paragraphs 5,6, and 8 quite clearly are not limited to classified information and I see no way to read that result in because of paragraph 4. However, the inclusion of paragraph 4 in its present form, which has practical meaning only with respect to paragraphs 2 and 3, has caused some confusion in the mind of at least one reader.

25X1A9a e. [redacted] comment at paragraph 4C (1) under the heading of "Legality" is an involved restatement of his comment at paragraph 4B (1).

25X1A9a f. [redacted] paragraph 4C (2), also under "Legality", suggests that if paragraphs 6 and 3 are intended to "prevent an employee from resorting to legal or legislative action in order to obtain satisfaction for alleged financial or personal injury done to him by CIA, I feel certain that this document will be held not only legally unenforceable but will be looked upon an intentional subrogation of the rights of an American citizen" (whatever that may mean). "The pretext that willingness to subrogate

one's personal rights under situations absolutely unforceable at the time of employment by CIA will certainly be held illegal and contrary to the public interest and can only be interpreted by the public as a gag on the individual." He then states that he and this Office on an earlier draft had agreed that the most we could exact from a new employee is his agreement to let us know when he intends to press a grievance and to work out ways to miminize the security damage. I would doubt that anyone ex- 25X1A9a
cept [redacted] has seriously thought that these agreements are enforceable in a court of law in any aspect, even if we could resort to court action without thereby accomplishing the very evil which the agreements seek to prevent. But the [redacted]/OGC 25X1A9a
plan does seem a more effective mechanism, at least with respect to legal actions, as distinguished from grievances.

2. The agreement appears faulty in a number of other respects:

a. The document is really not an agreement in a sense of a contract. At most it is a promise or an oath.

b. At several points the employee makes several statements which cannot be true. The term "I understand" is used in paragraphs 1,5, and 6 to mean "I know this to be true". The most he can truthfully say is "I am told this is true".

c. Paragraph 2 requires the employee to state that he understands the Espionage Act, which will be true in the case of almost no employees.

d. Paragraph 7 provides that employment "is conditioned upon my understanding of and strict compliance with CIA Security Regulations". Certainly no employee ever complies with this undertaking and at the time of entering on duty it would be impossible for anyone to do so.

e. Paragraphs 5 and 7 are partly duplicative and could be combined.

25X1A9a f. With respect to paragraph 6, the criticisms of this and paragraph 3 which [redacted] notes are caused partly by the fact that paragraph 6 undertakes to provide that certain actions there mentioned constitute violations of Paragraph 3. Paragraph 6 could be written so that the actions violate paragraph 6 only, thereby avoiding the difficulties mentioned by [redacted] 25X1A9a

g. Paragraphs 5 and 8 both have to do with publication and could be combined.

3. The foregoing focuses once more the questions of the legal effect, enforceability, purpose sought, etc., concerning these security agreements. I would think the following are correct statements:

a. Violation of the agreement would be a basis for

terminating an employee.

b. The employee is subject to the Espionage Act with or without this secrecy agreement and whether or not he knows of the Act.

c. The employee is subject to Agency regulations with or without the agreement.

d. The agreement would not be enforceable by resorting to lawsuit.

e. Even if the agreement were enforceable, resort to legal action would be impractical and self-defeating in nearly, if not every, case.

4. In essence, I agree that the agreement is a drafting hodge-podge and should be entirely re-written, if anyone believes the agreement is a valuable instrument. On the other hand, the ambiguities, duplications and other drafting objections mentioned above, it seems to me, would leave the employee with no clear and specific understanding of the committments made by him in signing the agreement, but doubtless would impress him with the need to be secretive and circumspect. Maybe this is all to the good. They might also enable the Agency to answer outside criticisms directed to the gag effect of the agreement by pointing out some of the less restrictive interpretations.

[redacted] 25X1A9a

Assistant General Counsel